

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

RECEIVED

JUN 15 4 36 PM '00

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

COMPLAINT OF THE CONTINUITY
SHIPPERS ASSOCIATION

Docket No. C99-4

NOTICE OF THE UNITED STATES POSTAL SERVICE
CONCERNING DECISION OF THE GOVERNORS

The United States Postal Service hereby gives notice of the following decision of
the Governors in Docket No. C99-4:

DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE
RECOMMENDED DECISION OF THE POSTAL RATE COMMISSION ON COMPLAINT ON
CHARGES FOR THE BULK PARCEL RETURN SERVICE, DOCKET No. C99-4
(JUNE 5, 2000).

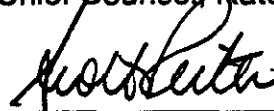
A copy of the Governors' Decision is attached.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



Scott L. Reiter

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2999; Fax -5402
June 15, 2000

**DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE
ON THE RECOMMENDED DECISION OF THE POSTAL RATE COMMISSION
ON COMPLAINT ON CHARGES FOR THE BULK PARCEL RETURN SERVICE,
DOCKET NO. C99-4**

June 5, 2000

STATEMENT OF EXPLANATION AND JUSTIFICATION

On April 14, 2000, the Postal Rate Commission issued its Opinion and Recommended Decision in Docket No. C99-4. This case comes from a complaint by the Continuity Shippers Association (CSA), filed on June 9, 1999, about the established fee for Bulk Parcel Return Service (BPRS). For the reasons given below, under the options provided to us by law, we reject the Recommended Decision in this case.

Background

Bulk Parcel Return Service provides for efficient return, in bulk, of machinable parcels originally mailed as bulk Standard Mail, which is limited to parcels weighing under one pound. Parcels may be returned because they are not deliverable as addressed, have been refused by the recipient, or have been accepted, opened, and resealed by the recipient for return of unwanted merchandise to the original mailer.¹

¹ The inclusion of opened parcels as eligible for BPRS under certain circumstances and the use of a no-fee return label was a recent enhancement to the service, which we approved on August 30, 1999. To ensure efficient return of opened parcels using BPRS, mailers must provide the recipients with a return label indicating that the original mailer will pay the postage due, similar to the label for Merchandise Return Service (MRS). There is no fee for use of the BPRS label, whereas users of MRS currently pay 30 cents per piece in addition to return postage. The current BPRS fee of \$1.75 covers both return postage and the label fee. Opened and resealed parcels otherwise eligible for BPRS that do not carry a postage-due return label may be returned to the original mailer as BPRS if they are found in the mailstream. This will be done when it is not efficient or practicable for the Postal Service to return the parcel to the recipient for payment of return postage, as is normally required for opened parcels without return labels that the recipient wishes to return to the mailer.

In evaluating this matter, it should be remembered that outbound bulk Standard Mail parcels pay rates that do not yet cover their costs. While such low rates have been in effect for many years, the Commission indicated in Docket No. MC95-1 that a remedy was needed. A surcharge was then established in Docket No. R97-1. The surcharge, however, even with a further increase proposed by the Postal Service in the rate proceeding now in progress, Docket No. R2000-1, will cover only part of the cost difference. In order to prevent rate shock, closure of the gap is being extended over several rate cases.

Before the establishment of BPRS, the return of bulk Standard Mail parcels required payment of single-piece Standard Mail (formerly third-class mail) rates. As a result of the rate design recommended by the Commission in Docket No. R94-1, rates for third-class single-piece mail were set substantially at parity with rates for First-Class Mail. Combined with cost increases, this change initially produced an average rate increase of 43.7 percent.² As the Postal Service prepared to address this situation by proposing BPRS in the Parcel Reform Case, the Advertising Mail Marketing Association filed a complaint in October of 1996. The complaint was suspended pending litigation of the Parcel Reform Case, but that case was withdrawn with the approach of an omnibus rate case.

To address the concerns of the mailers, the Postal Service requested a separate proceeding to establish BPRS service. BPRS was implemented in October of 1997 following a negotiated settlement among the parties. The fee was set at \$1.75 per piece, based on projected unit costs of \$1.12, multiplied by the system-wide average cost coverage of 156 percent. The cost estimate employed in the case was based entirely on cost estimates for analogous mail services, since BPRS did not yet exist. The settlement

² Subsequently, as a result of Docket No. R97-1, Single-Piece Standard Mail was eliminated and non-BPRS undeliverable bulk Standard Mail parcels are returned as First-Class or Priority Mail.

agreement provided for the Postal Service to complete a cost study of actual BPRS operations one year later. That cost study was filed in October of 1998. It showed unit costs of \$1.04 (using the Commission's costing methodology), about seven percent less than projected in setting the fee.

Procedural History of This Complaint Case

Several months later, in June of 1999, CSA filed a complaint alleging that the BPRS fee "is excessive and cannot be reconciled with the cost and non-cost criteria of the Act and that the BPRS service offered by the Postal Service to Standard (A) merchandise mailers does not conform to the policies set out in Title 39." The complaint asked the Commission "to issue a Recommended Decision to the Board of Governors of the Postal Service recommending the establishment of rates for BPRS that properly reflect the costs of this Service and the value of the Service to the sender and recipient, and that otherwise accord with the policies and purposes of the Act."

The Postal Service answered that CSA had failed to allege any facts showing that the rates did not conform to the Act and asked that the Commission dismiss the complaint. In Order No. 1271, issued on November 18, 1999, the Commission determined that hearings would be appropriate and anticipated that "the recent establishment of the BPRS rate through a settlement agreed to by CSA, and the expectation that an omnibus rate request will be submitted in the near future, would seem to provide a situation where it may be possible for the parties to pursue resolution and settlement of the Complaint through informal procedures." Settlement discussions, which had already begun and which continued throughout the proceeding, including after the filing of the omnibus rate case, ultimately proved unsuccessful.

On January 12, 2000, the Postal Service filed the omnibus rate case now pending, which proposes a BPRS fee of \$1.65. On the same day, the Postal Service asked the

Commission to suspend the CSA complaint pending litigation of the omnibus rate case, or to consolidate the two dockets, as it had done in similar situations in the past, when an omnibus rate case overtook individual rate complaints. The Commission's Office of the Consumer Advocate (OCA) supported this request. The Commission declined to do so. Following evidentiary proceedings under 39 U.S.C. § 3624,³ the Commission issued the Recommended Decision now before us.

Discussion

Interrelated legal and practical concerns have led us to reject the Recommended Decision. We are particularly concerned with the standard the Commission applied, over the objection of the Postal Service and the OCA, in reaching the conclusion to recommend a new BPRS fee. The Commission found that "the existing BPRS [fee] does not fairly reflect the application of Section 3622 factors." Opinion at 13. It reached this conclusion without an explicit finding that any particular criterion under section 3622 had been breached. The identical markup percentage that underlies the current fee, reflecting application of the non-cost factors of section 3622, was applied. Moreover, the Commission did not find that the existing fee fails to meet the cost factor of section 3622, requiring that rates and fees cover the direct and indirect costs of providing the service and make a contribution to other costs.

³ We have a procedural concern about the manner in which FY 1998 costs were introduced as the basis for the fee recommendation. All of the parties to the litigation had based their testimony and arguments on the assumption that the fee should be evaluated based on costs projected to FY 2000. No party, including the Postal Service, had challenged the FY 2000 projection presented by the complainant. The parties received no notice of the Commission's intention to use FY 1998 costs. Regardless of which year is more appropriate, the parties did not have an opportunity to offer their views in this regard. In the interest of due process, we think that the better practice is for the parties to have notice of the intention to consider other approaches they have not addressed, and an opportunity to provide comments before a recommended decision is issued.

Instead, the Commission concluded that it was sufficient to "determine whether the policies of the Act, on balance, call for the recommendation of a change in the rates." Opinion at 13. We are concerned that the standard implicitly followed in this analysis fails to comport with the complaint statute, and fails to distinguish the situation regarding this particular fee from those surrounding many of the rates and fees for which proposed changes are now pending before the Commission in the omnibus rate case, Docket No. R2000-1.

Under the complaint statute, section 3662, a recommended decision proposing changes to rates and fees requires a complaint that existing rates and fees "do not conform to the policies set out in [title 39]," and a finding that the complaint was justified. The statute contemplates that complainants have a higher burden to meet than asking the Commission to take a fresh look, to see if an updated combination of cost and markup today should produce a rate or fee different from that set in the most recent case. If that were the standard, then each of the hundreds of rates and fees set in the periodic omnibus rate cases would become fair game, after expiration of the initial test year employed in the case. The only check against piecemeal re-litigation of any particular rate or fee would be the unguided discretion of the Commission and the Governors.

We are convinced, as the Postal Service and the OCA maintained in this case, that the statute has in mind more than this. A complaint procedure is a safety valve. Its function is not a parallel alternative for general updates of rates and fees, but a corrective mechanism for the unusual eventuality in which something goes seriously and unexpectedly wrong between the rate cases initiated under section 3622 – so seriously wrong that the rate or fee no longer "conform[s] to the policies" of the law. On the record of the present complaint, that is not the case here. If the object were simply to update the BPRS fee based on latest information, in comparison the most current revenue and cost data would justify changes to most of the current rates and fees for all types of mail.

That is why an omnibus rate proposal is already before the Commission, to consider what changes are needed taking account of all of the relevant factors and treating all types of mail on an even-handed basis at the same time.

From a practical standpoint, we are concerned that the Commission's very broad reading of the standard to apply in complaint proceedings may give an undue incentive for parties to bring frequent rate complaints. Each year's cost report will likely show cost fluctuations in the range of the cost changes at issue here (about seven percent, from \$1.12 to \$1.04). In comparison, the Cost and Revenue Analysis report for FY 1998 showed that many of the other special services, such as insurance, COD, and registry, had greater variances between actual costs for that year and the costs projected when the fees were previously set than did the BPRS service at issue in this complaint. A seven percent variance between test year projections in an omnibus rate case and actual experience over the next year or two is not unusual. Actual cost data may show somewhat higher costs than projected for some services, and lower costs for others.

Ratemaking projections are not an exact science. That does not mean it is in anyone's interest to be perpetually tinkering and re-litigating in an attempt to reflect each year's new cost or revenue data as it comes in. Mail users, the Postal Service, and the Commission all have a legitimate interest in preserving a reasonable degree of rate stability, both for planning purposes and to avoid the expense of continuous litigation.

In this particular case, the principal distinguishing factor identified in the Recommended Decision is the fact that the cost study for BPRS resulted from a prior settlement agreement. We do not find that this historical fact rises to the level required by the statute for a showing that the fee fails to conform to the policies of the Act. On the record

in this case, the finding required for relief in a complaint case cannot be made.⁴ With an omnibus rate case already well underway – including a comprehensive review of all costs and cost coverages, in which some services have experienced greater variances from previous cost projections than are reflected in this complaint – it is appropriate for the BPRS fee to be reconsidered in that proceeding alongside all other rates and fees.

ORDER

In accordance with the foregoing Decision of the Governors, the Recommended Decision of the Postal Rate Commission, dated April 14, 2000, recommending a change in Fee Schedule 935, Bulk Parcel Return Service, is rejected.

By The Governors:


Chairman

⁴ The Postal Service argued before the Commission in this case, consistent with its position in the past, that a recommended decision may submit rate changes to the Governors only pursuant to a request by the Postal Service under section 3622, and not in a complaint proceeding. Initial Brief of the United States Postal Service (March 3, 2000) at 13-14. In view of our resolution of the case, we need not consider this issue.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



Scott L. Reiter

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
June 15, 2000